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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	2:13-CR-439-KJD-(VCF)
)	
Plaintiff,)	
)	
v.)	United States of America's Unopposed Motion
)	to Extend Time to File its Motions Regarding
ANTHONY B. BRANDEL, and)	Restitution and Forfeiture
JAMES WARRAS,)	(First Request)
)	
)	
Defendants.)	

The United States of America respectfully moves this Court for an Order extending the time for the United States to file its motions regarding restitution and forfeiture. This motion is the first request for an extension of time to file the motions because the large amount of information to process has taken longer than anticipated on top of already full workloads. The deadline for filing the motions is August 31, 2016. The United States requests a two week extension of the schedule as follows: Motions due September 14, 2016; Responses due September 28, 2016; Replies due October 12, 2016; and the hearing no earlier than the week of October 24-27, 2016.

The grounds for extending the time are as follows.

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1 Raquel Lazo and Kathleen Bliss, counsel for James Warras (Warras) and Anthony Brandel
2 (Brandel) respectively, were contacted on August 30, 2016, and agreed to the extension of time.

3 Undersigned counsels have large case loads and have been unable to complete the motions
4 to this point. Counsel for Warras and AUSA Hollingsworth have oral argument at the Ninth Circuit
5 the week of September 12, 2016, on another case. Counsel for Warras has a trial scheduled to start
6 on October 17, 2016. Both Warras' and Brandel's counsel have oral argument before the Ninth
7 Circuit on October 20, 2016. The government and defense counsel request two weeks because a
8 shorter delay will conflict with Ninth Circuit oral argument and a trial.

9 On August 3, 2016, this Court reserved jurisdiction to determine the criminal forfeiture
10 money judgment amount because Warras and Brandel stipulated the Judgment in a Criminal Case
11 will not be filed and the sentencing will not be completed until the forfeiture amount is resolved. *See*
12 Fed. R. Crim. P. 32.2(b)(4)(B) (2016); *United States v. Martin*, 662 F.3d 301, 306-10 (4th Cir. 2011)
13 (explaining the district court had jurisdiction to enter the criminal forfeiture because Fed. R. Crim. P.
14 32 is a time-related directive, not a jurisdictional directive, and the district court gave defendants
15 "notice at the time of sentencing that the district would enter forfeiture orders"), *cert. denied* ---
16 U.S. ---, 132 S. Ct. 1953 (2012); *United States v. Ereme*, 339 F. App'x 340, 342 (4th Cir. 2009) (stating
17 the court had jurisdiction to enter the forfeiture order because Ereme was aware of the forfeiture
18 order and objected to the forfeiture order at sentencing that caused the court not to enter it with the
19 Judgment); *United States v. Ferrario-Pozzani*, 368 F.3d 5, 9-10 (1st Cir. 2004) (explaining the court
20 retained jurisdiction to enter the forfeiture order later because the defendant was aware of the
21 forfeiture order and agreed to the continuance to determine the forfeiture); *United States v. Koch*, 491
22 F.3d 929, 931-932 (8th Cir. 2007) (stating the district court has jurisdiction because the Federal Rules
23 of Criminal Procedure are "presumptively waivable," which the defendant waived; the parties agreed
24 the forfeiture order would be entered after the Judgment; the Judgment can be amended to add a
25 forfeiture order under Fed. R. Crim. P. 36; and entering the forfeiture order at sentencing is not a
26 fundamental right) (quoting *United States v. Mezzanatto*, 513 U.S. 196, 201 -202 (1995) (explaining that

1 the Supreme Court has “taken the context of a broad array of constitutional and statutory
2 provisions[]” and “the Federal Rules if Criminal Procedures” as presumptively waivable) (citations
3 omitted; brackets added); *United States v. Myers*, 804 F.3d 1246 (9th Cir. 2015) (explaining that Federal
4 Rules of Criminal Procedure are waivable, including Rule 11).

5 On August 3, 2016, this Court sentenced Warras and Brandel but, under 18 U.S.C. §
6 3664(d)(5), reserved jurisdiction to determine the restitution amount subsequently. “[A] sentencing
7 court that misses the 90–day deadline nonetheless retains the power to order restitution - at least
8 where, as here, the sentencing court made clear prior to the deadline’s expiration that it would order
9 restitution, leaving open (for more than 90 days) only the amount.” *Dolan v. United States*, 560 U.S.
10 605, 608 (2010). This Court does not lose jurisdiction if it misses the 90-day deadline under §
11 3664(d)(5) because its deadline “seeks speed by creating a time-related directive that is legally
12 enforceable but does not deprive a judge or other public official of the power to take the action to
13 which the deadline applies if the deadline is missed.” *Dolan*, 560 U.S. at 611 (citations omitted). “The
14 fact that a sentencing court misses the statute’s 90 - day deadline, even through its own fault or that
15 of the Government, does not deprive the court of the power to order restitution.” *Id.* Since this
16 Court unambiguously made it clear it would order restitution, the district court reserved its
17 jurisdiction to order restitution at a later time. Because “the court plainly expressed its inclusion of
18 restitution as a part of the pronouncement of sentence, which occurred before the statutory deadline
19 expired[, and t]he court then granted restitution in part on April 30, 2008, after the deadline expired,
20 and filed a final order granting restitution on June 30, 2008, ... the district court acted properly.
21 *United States v. Fu Sheng Kuo*, 620 F.3d 1158, 1162-63 (9th Cir. 2010).

22 This Motion is not submitted solely for the purpose of delay or for any other improper
23 purpose.

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1 This Court should grant an extension of time to, and including, the following: Motions due
2 September 14, 2016; Responses due September 28, 2016; Replies due October 12, 2016; and the
3 hearing no earlier than the week of October 24-27, 2016.


4 DATED this 31st day of August, 2016.

5 DANIEL G. BOGDEN
6 United States Attorney

7 /s/ Daniel D. Hollingsworth
8 DANIEL D. HOLLINGSWORTH
9 Assistant United States Attorney

10 /s/ Mark E. Woolf
11 MARK E. WOOLF
12 Assistant United States Attorney

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15 IT IS SO ORDERED:
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20 UNITED STATES DISTRICT JUDGE

21 DATED: August 31, 2016
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/s/ Heidi L. Skillin
HEIDI L. SKILLIN
Asset Forfeiture Paralegal